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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,771	04/16/2004	Christopher Cavallaro	B02-03	1287

40990 7590 01/26/2006

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EXAMINER

GORDON, RAEANN

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/826,771	CAVALLARO ET AL.	
	Examiner Raeann Gorden	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 November 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>4-16-04</u> .	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of claims 1-10 (group 1) in the reply filed on November 8, 2005 is acknowledged.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-10 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,676,541 in view of Nesbitt (4,431,193). Although the conflicting claims are not identical, they are not patentably distinct from each other because the present invention claims identical subject matter as the claims in the '541 patent. The '541 patent does not disclose

foamed material for the intermediate layer. However, Nesbitt teaches foamed materials for intermediate layers. One of ordinary skill in the art would have foamed the layers for the desired properties.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raeann Gorden whose telephone number is 571-272-4409. The examiner can normally be reached on Mon, Tues, Thurs, Fri 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Rg
January 20, 2006



RAEANN GORDEN
PRIMARY EXAMINER

LIST OF REFERENCES BY APPLICANT	ATTY. DOCKET NO.	APPLICATION NO.
	B02-03	To Be Assigned
	APPLICANT	
	Christopher Cavallaro et. al.	
	FILING DATE	GROUP
	April 16, 2004	To Be Assigned

U.S. PATENT DOCUMENTS:

EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUBCLASS	FILING DATE
<i>SC</i>	AA	6,677,401	01/13/04	Boehm et al.	525	72	03/13/02
	AB	6,673,859	01/06/04	Ladd et al.	524	432	01/22/03
	AC	6,468,168	10/22/02	Nesbitt et al.	473	357	06/03/99
	AD	6,419,595	07/16/02	Maruko et al.	473	376	07/10/00
	AE	6,270,429	08/07/01	Sullivan	473	374	09/07/99
	AF	6,210,294	04/03/01	Wu	473	377	05/04/99
	AG	6,190,268	02/20/01	Dewanjee	473	370	07/27/99
	AH	6,025,442	02/15/00	Harris et al	525	221	07/28/98
	AI	5,971,870	10/26/99	Sullivan et al.	473	373	11/21/97
	AJ	5,873,796	02/23/99	Cavallaro et al.	473	365	11/22/95
	AK	5,824,746	10/20/98	Harris et al.	525	196	06/05/96
	AL	5,783,293	07/21/98	Lammi	428	212	11/07/96
	AM	5,688,191	11/18/97	Cavallaro et al.	473	373	06/07/95
	AN	5,484,870	01/16/96	Wu	528	28	06/28/93
	AO	5,334,673	08/02/94	Wu	473	378	12/24/91
	AP	5,314,187	05/24/94	Proudfit	473	373	06/29/92
	AQ	4,919,434	04/24/90	Saito	473	373	07/25/88
	AR	4,431,193	02/14/84	Nesbitt	473	374	08/25/81
	AS	4,274,637	06/23/81	Molitor	273	235	06/02/80
	AT	3,819,768	06/25/74	Molitor	260	378	02/11/72
	AU	3,454,280	07/08/69	Harrison et al.	473	385	02/02/66
<i>SC</i>	AV	3,262,272	07/26/66	Barakauskas et al.	60	39.05	01/17/64

EXAMINER	DATE CONSIDERED
	100-06
*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.	

Notice of References Cited		Application/Control No.	Applicant(s)/Patent Under Reexamination CAVALLARO ET AL.	
		10/826,771	Examiner Raeann Gorden	Art Unit 3711 Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-6,676,541	01-2004	Cavallaro et al.	473/376
*	B	US-4,431,193	02-1984	Nesbitt, R. Dennis	473/374
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

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